

REMARKS

Claims 1-97, 129-176, and 178-190 are pending in the present application. Claims 95-128 and 177 are canceled and claims 1-4, 8-10, 14-17, 19-22, 26-28, 32-35, 37-43, 47-58, 62-64, 66-72, 76-78, 80-85, 87, 88, 90-94, 129, 132-137, 139, 143, 146, 148, 169-164, 169-175, 182, and 183 are amended. Reconsideration of the claims is respectfully requested.

I. Objection to Claims

The examiner objects to claim 177 under the assertion that claim 177 contains the same limitations as claim 176. Applicants have canceled claim 177, thereby rendering the objection moot.

II. 35 U.S.C. § 101

The examiner has rejected claims 98 and 101 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. Applicants have canceled these claims, thereby rendering the rejection moot.

III. 35 U.S.C. § 102, Asserted Anticipation**III.A Asserted Anticipation of Claims 98, 101, 112, 113, and 128**

Applicants have canceled these claims, as well as the corresponding dependent claims. Accordingly, the rejection of these claims over *Lof* is moot.

III.B Asserted Anticipation of Claims 1, 19, 37, 66, and 80

The examiner rejects claims 1-9, 13-27, 31-42, 46-57, 61, 71, 75-85, 89-94, 98-105, 110-117, 126-128 under 35 U.S.C. § 102 as anticipated by *Lof et al., System, Method and Computer Program Product for Enhancing Commercial Value of Electrical Power Produced from a Renewable Energy Power Production Facility*, U.S. Patent 6,671,585 (Dec. 30, 2003). This rejection is respectfully traversed.

The examiner states that:

Regarding claims 1, 19 and 37, Lof discloses a method, system and computer program product for managing a utility service, comprising the steps of:

- analyzing relationship information representing a relationship of availability of the utility service and consumption of the utility service (Col. 13, lines 37-46; Col. 16, lines 35-42); and, sending a message over a data network to at least one region of a utility service network to thereby modify utility service consumption based on the analysis of the relationship information (Col. 16, lines 40-58 and lines 64-67, please note that load shedding takes place at times of lowered production capacity wherein a message has to be sent in to cut back the power to certain customers who have agreed to have their power cut back. See also Col. 11, lines 62-65; Col. 12, lines 25-31 and 43-45, i.e., the utility consumption of the hydroelectric would be modified according to the needs of the wind farm).

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). In this case each and every feature of the presently claimed invention as amended is not identically shown in the cited reference, arranged as they are in the claims.

Claim 1 as amended provides as follows:

1. A method for managing a utility service, the method comprising the steps of:
 - analyzing relationship information representing a relationship of availability of the utility service and consumption of the utility service by an appliance operably connected to the utility service; and,
 - sending a message over a data network to at least one region of a utility service network, said message including instructions for modifying utility service consumption of the appliance based on the analysis of the relationship information.

Office Action of March 24, 2005, pp.3-4.

Claim 1 as amended contains the step of analyzing relationship information representing a relationship of availability of the utility service and consumption of the

utility service by an appliance operably connected to the utility service. Claim 1 as amended contains the further step that the message includes instructions for modifying utility service consumption of the appliance based on the analysis of the relationship information.

Lof does not show either step as amended. *Lof* shows a system for modifying electrical power generated at one or more secondary power plants based on changing power generation at a windmill site, as shown by the following portion of *Lof*:

More particularly, in the event of over capacity production by the wind farm 503, the premier power facilities 505 communicates this condition to the control center processor 500, which sends a message to the hydroelectric plant 511, requesting that the hydroelectric plant 511 produce a corresponding lesser amount of electric power during this period of overproduction. The total output power from both the wind farm 503 and the hydroelectric plant 511 is thus held to be consistent with the aggregate delivery requirement for both the hydroelectric plant 511 and wind farm 503. Moreover, at any given time, the wind farm 503 and the hydroelectric plant have certain contractual obligations to produce predetermined amounts of power. This predetermined amount of power in the aggregate will equal a certain level of power. However, recognizing that for maximizing power output, the wind farm 503 does not have precise control over the amount of power it produces at any given instant in time, by communicating from the wind farm 503 to the hydroelectric plant the amount of overproduction, the hydroelectric plant 511 can adjust its output level so as to compensate for the surplus.

Lof, col. 12, ll. 25-45 (emphasis added) (portions quoted by the examiner).

Lof also discusses reducing the overall power load on the utility grid by reducing the amount of power *available* to a customer based on a contract made with the customer, as shown by the following portion of *Lof*:

Furthermore, the renewable energy control center processor 500, as well as the power system operation management mechanism 602 that controls an optional feature for performing load shedding, cooperate to manage and balance the power that is actually produced versus the actual demand. *Load shedding is achieved by contractual relationships (preferably) with certain customers who have agreed to have their power cut back at times of peak need.* A feature of the present invention is that the renewable energy control center processor 500 may also contract, through private contracts, with separate optional load shedding customers who have agreed to have their power level demands fluctuate and

diminished purposely when lulls in the wind power are observed. For example, while the virtual energy storage facility is one mechanism for converting the excess power produced by renewable power sources into tangible assets that may be turned into power at a later time (perhaps by increasing the water volume in a hydroelectric plant's reservoir), the load shedding operation in connection with the renewable energy control center processor provides a mechanism for reducing the demand obligations from selected customers who have agreed to have their power cut back in times of lowered output capacity from the wind turbines. Thus, a feature of the present invention is to coordinate periods of oversupply from a renewable energy source by storing power production resources at a virtual energy storage device, and also compensating for output power deficiencies by either requesting that a release from the reserve stored at the virtual energy storage facility produce power to offset the short fall, and/or institute power shedding operations at predetermined customers who have agreed to have their power cut back at times of lowered production capacity.

Lof, col. 16, ll. 35-67 (emphasis added) (portions cited by the examiner).

Thus, *Lof* shows entering into a contract with a customer to reduce overall power provided to the customer in case of reduced power production. *Lof* also shows producing more power at other power plants on the grid in case of a reduction of power production at a windmill location. The remaining portions of *Lof* cited by the examiner add nothing relevant regarding claim 1 as amended. The plain meaning of the quoted portions of *Lof* shows that *Lof* does not teach modifying utility consumption of an individual appliance based on analysis of the relationship between the availability of a utility and consumption of the utility by the appliance, as claimed. Thus, *Lof* does not anticipate claim 1 as amended.

Independent claims 19, 37, 66, and 80 have been amended to contain features similar to claim 1 as amended. Hence, *Lof* does not anticipate these claims for the same reasons that *Lof* does not anticipate claim 1 as amended.

Claims 2-10, 13, 15-27, 31, 33-42, 46, 48, 52-57, 61, 63, 66-71, 75, 77-85, 89, and 91-93 all depended from claims 1, 19, 37, 66, and 80 accordingly. At least by virtue of depending from claims 1, 19, 37, 66, and 80 accordingly, *Lof* also does not anticipate these claims.

Additionally, these claims claim other additional combinations of features not suggested by *Lof*. For example, *Lof* does not show that a message instructs at least one region permitting increased or decreased power consumption, as claimed in claims 2 and 3. The examiner believes otherwise, pointing to the following portions of *Lof* for support:

Using the cooperative arrangement the energy output obligation from the wind farm is achieved by asking the hydroelectric plant 511 to output sufficient power to compensate for the temporary short fall from the wind farm.

...
More particularly, in the event of over capacity production by the wind farm 503, the premier power facilities 505 communicates this condition to the control center processor 500, which sends a message to the hydroelectric plant 511, requesting that the hydroelectric plant 511 produce a corresponding lesser amount of electric power during this period of overproduction.

...
In this way, the wind farm 503 (or alternatively the hydroelectric plant 511 itself) may dispatch an "anticipatory" control command to the hydroelectric plant 511, causing the hydroelectric plant 511 to begin to make the necessary adjustments for increasing/decreasing the power production based on the forecasted surplus/shortfall in power production from the wind farm 503 as a result of predicted wind speed increase or decrease.

Lof, col. 11, l.65 through col. 12, l. 2; col. 12, ll. 25-31; col. 13, ll. 41-46.

The cited text teaches modifying the amount of power *produced* at a separate power plant based on a change in the power produced at a windmill farm. The cited text does not show a message instructing at least one region to permit increased or decreased power *consumption*, as claimed in claims 2 and 3. The cited portions of *Lof* show maintaining power available to customers, not increasing or decreasing the actual power consumed as claimed. Thus, *Lof* also does not show the features of claims 2 and 3.

In another example, *Lof* also does not show the features of claim 18. The examiner asserts otherwise, but provides no support from *Lof* to show that *Lof* actually does show the features regarding historical data, as claimed. *Lof* does not show the claimed features; thus, *Lof* also does not anticipate claim 18.

Furthermore, *Lof* does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. Absent the examiner pointing

out some teaching or incentive to implement *Lof* and modifying power consumption by individual appliances, one of ordinary skill in the art would not be led to modify *Lof* to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify *Lof* in this manner, the presently claimed invention can be reached only through an improper use of hindsight using the applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

III.C Asserted Anticipation of Claim 94

Regarding claim 94, this amended claim is as follows:

94. A method for managing consumption of a utility, the method comprising the steps of:

receiving a message over a data network said message containing instructions regarding modification of permitted utility consumption of a unit; and

implementing said message to modify the utility consumption of the unit.

Claim 94 contains the feature that the message contains instructions regarding modification of permitted utility consumption of a unit. As shown above with respect to the preceding independent claims, nothing in *Lof* shows modification of utility consumption of an individual appliance, or of an individual unit as claims in claim 94. Thus, *Lof* does not anticipate claim 94.

IV. 35 U.S.C. § 103, Obviousness

The examiner rejects claims 10-12, 28-30, 43-45, 58-60, 72-74, 86-88, 85-97, 106-109, 118-125, and 129-190 under 35 U.S.C. § 103 obvious over *Lof* in view of *Johnson et al., Bidding for Energy Supply to Resellers and Their Customers*, U.S. Patent Application Publication 2004/0015433 (Jan. 22, 2004). This rejection is respectfully traversed.

The examiner states that:

Regarding claims 10-12, 28-30, 43-45, 58-60, 72-74, 86-88, 85-97, 106-109, 118-125 and 129-190, the same citations applied to claims 1-9, 13-27, 31-42, 46-57, 61, 71, 75-85, 89-94, 98-105, 110-117, 126-128 above apply as well for these claims. However, *Lof*, fails to disclose associating a customer system with a class of utility service; identifying a class of utility service, and changing

the class of utility service. *Lof* further fails to disclose auctioning or negotiating a class of utility service and changing dynamically or unilaterally the class of utility service; the change of class of utility service is based on a cost increase, decrease or available amount of utility service. But *Johnson et al.* discloses associating a customer system with a *class of utility service* and identifying a class of utility service, and *changing the class of utility service* (Page 4, [0021]; Page 2, [0009], lines 4-11). *Lof* further fails to disclose auctioning or negotiating a class of utility service (Page 3, [0017], lines 10-20; Page 4 [0019]; and changing dynamically or unilaterally the class of utility service (Page 2, [0012])); the change of class of utility service is based on a cost increase, decrease or available amount of utility service (Page 5, [0042], lines 21-46; [0025]).

Therefore, it would have been obvious to a person of the ordinary skill in the art at the time the invention was made to combine the power production facility of *Lof* with the bidding for energy supply to customers system of *Johnson* because it would provide an auction service that will stimulate competition and facilitate the consumer's ability to make economic choices between providers (*Johnson*, Page 3, [0017], lines 10-20).

Office Action of March 24, 2005, pp.7-8 (emphasis in original).

IV.A Asserted Obviousness of Claims 95-97, 106-109, and 118-125

Applicants have canceled claims 95-97, 106-109, and 118-125. Therefore, the rejection of these claims is moot.

IV.B Asserted Obviousness of Claims 86-88

Claims 86-88 depend from amended claim 80, which contains the feature that the at least one message being is used to modify utility consumption of an appliance in the at least one region. As shown above, *Lof* does not show this claimed feature. Similarly, nothing in *Lof* suggests this claimed feature. In addition, nothing in *Johnson* shows or suggests modifying a utility service provided to an individual appliance, as claimed. Thus, the proposed combination does not result in the inventions of claims 85-88. Accordingly, it is not possible to state a *prima facie* obviousness rejection of these claims, which should now be in condition for allowance.

IV.C Asserted Obviousness of Claims 129-190

Regarding claim 129, the proposed combination does not result in the claimed invention because neither *Lof* nor *Johnson* show or suggest the feature of associating a customer system with a class of utility service or changing a service parameter provided to the customer system, as claimed. In addition, neither *Lof* nor *Johnson* show or suggest the changing or negotiating a class of utility service. Claim 129 as amended is as follows:

129. A method of doing business for providing utility service, comprising:

analyzing an operation of a utility system;
associating a customer system with a class of utility service;

sending a message to the customer system changing a service parameter of the utility service provided to the customer system in response to a change in the operation of the utility system, and in further response to the class of utility service associated with the customer system.

All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). With regard to both features, the examiner admits, and Applicants agree, that *Lof* fails to show these claimed features. With regard to the feature of associating a customer system with a class of utility service, the examiner asserts that *Johnson* shows the claimed feature, citing from *Johnson* as follows:

From the list of all Providers providing bid information to the Moderator, each control computer (or the Moderator) can select those Providers from whom participating end users or resellers will be provided electric power or natural gas and can change that selection at any time. After each new bid is submitted by a Provider and is processed by the Moderator, the rate and/or provider selection data will be transmitted to the relevant control computers (or retained by the Moderator if the Moderator will perform the functions of the control computer, including selecting a Provider for each set of end users or resellers) and rate information will be distributed to some or all of the Providers in order to implement the auction. A Provider, for example, may not be interested in receiving the bids of other Providers who are not active in the same geographic regions. All Providers will have the opportunity thereafter to submit a lower or higher bid for any end user (or any reseller or group of resellers) or group of end users to whom they wish to supply electric power or natural gas.

...
These tariffs, filed by the local utility with the applicable state PUC, set forth specific rates to be charged to different classes of customers - e.g., large industrial and commercial end users often pay rates based on peak demand as well as total volume consumed, whereas the rates paid by residential customers typically relate only to total volume consumed. Some tariffs call for different rates depending on time of use (e.g., peak v. off-peak pricing).

Johnson, p. 4, paragraph 21; p. 2, paragraph 9, ll. 4-11.

The cited portions of *Johnson* discuss selecting providers from whom participating end users will be provided electric power and discuss that different tariffs are charged to different classes of *customers*. Examples of classes of customers include industrial and residential customers. However, nothing in the cited text shows or suggests associating a *customer system* with a class of utility system, as claimed. A customer system, as defined in the specification, includes:

a customer computer associated with the customer's electrical network and connected via the world wide web network, an intranet or other connection system to a second computer or computer server affiliated with the electric utility. The customer system also includes, but is not limited to, the customer's electrical network, power outlets, phone jacks, CATV outlets and appliances connected thereto.

Specification, p. 8, ll. 3-8.

Nothing in *Johnson* shows or suggests associating a computer, an intranet, electrical network, power outlets, phone jacks, CATV outlets, or appliances with a class of utility service. Even if the claim is not limited by the disclosure in the specification, nothing in *Johnson* actually shows or suggests associating a class of utility service with anything that could be construed as a *customer system*. Thus, while *Johnson* may note that customers may be classified for purposes of imposing tariffs, *Johnson* does not show or suggest associating such classifications with individual systems of the customer. Because neither *Johnson* nor *Lof* show or suggest this claimed feature, the proposed combination does not result in the claimed inventions. Accordingly, the examiner has failed to state a *prima facie* obviousness rejection.

In addition, neither *Lof* nor *Johnson* show or suggest changing a service parameter provided to the customer system, as claimed. The examiner asserts otherwise, citing the above quoted sections of *Johnson* and citing the additional portions of *Johnson*:

In many states or geographic regions, local electric utilities have formed wholesale power pools in which they share power, as needed, with other members of the pool under arrangements and according to rules previously agreed to by all the members. In some of these power pools, the members' generating facilities and key portions of their respective power grids are placed under the control of a regional or pool controller who manages the continuous balancing of power being transmitted across these grids for greatest efficiency and at lowest cost to the members. The pool controller in some cases, for example, will advise the pool members on one day of the power he expects to need during each hour of the following day, in order to satisfy the projected aggregate demand on the pool's combined grid by the utilities' customers. Each member is invited to submit offers (quantities and prices) of the power it is willing to supply to the combined grid. Starting with the lowest-priced power first, the controller accepts such offers until he reaches the aggregate quantity he needs for each hour of the next day. Typically, the clearing price - the price of the last unit of power needed by the controller to meet his projected demand for each hour - is used to set the price that all suppliers for that hour will receive, notwithstanding that some of the accepted offers were at prices lower than the clearing price. This approach ensures an efficient but equitable least-cost wholesale pricing arrangement among the pool members.

...
Through this bidding process, Providers can compete to supply electric power or natural gas to end users and resellers based on available capacity, delivery destinations, volume discounts, peak period requirements, etc. Providers can also manage their power generation, gas production and/or energy provisioning activities by adjusting their bids from time to time, depending on capacity utilization or other energy availability factors. And end users (and resellers) can easily make economic choices among competing Providers.

...;(iii)the Moderator transmits back to the bidders some or all of the bids received from the other bidding Providers, giving them an opportunity to adjust some or all of their bids;(iv)the Moderator transmits to each control computer such rate information and/or provider selection data as is relevant to the end user or group of end users (or resellers) associated with that control computer;(v)using the information received from the Moderator, each control computer selects the Provider offering the lowest rate (or best economic value) at that time to the end users (or resellers) associated with that control computer (after applying any decision rules formulated and inputted by the control computer's

administrator and/or formulated and transmitted to the applicable control computer by any end user or reseller) and transmits such selection to the Moderator; (vi) for those end users or resellers not associated with a control computer, the Moderator will perform all of the functions the control computer would otherwise perform, including selecting the Provider offering the lowest rate (or best economic value) at that time to each such end user; (vii) the Moderator (or applicable control computer) transmits a notification to the selected Provider (which may also specify the estimated energy requirements of the set of end users to be served) and, perhaps, copies of such notification to the end user's local energy distribution company (DISCO) and to the respective Provider supplying power or natural gas to this end user immediately prior to the start of energy deliveries by the newly-selected Provider;... *Johnson*, p.2, paragraph 12; page 4, paragraph 25; and page 5, paragraph 42, ll. 21-46.

The quoted portions of *Johnson* describe a method of allocating energy from a power pool through a bidding process. *Johnson* does state that power is eventually distributed to an end user or a group of end users. However, *Johnson* does not show or suggest "sending a message to the customer system changing a service parameter of the utility service provided to the customer system in response to a change in the operation of the utility system, and in further response to the class of utility service associated with the customer system," as claimed. *Johnson* does not show or suggest changing a service parameter based on a class of utility service, as asserted by the examiner. *Johnson* also does not show or suggest changing a service parameter in further response to the class of utility service associated with the *customer system*, as claimed. As shown above, *Johnson* is devoid of disclosure regarding individual customer systems. Thus, contrary to the examiner's assertions, *Johnson* does not show or suggest the limitations of claim 129. Accordingly, the proposed combination again does not result in the invention of claim 129.

For similar reasons, the examiner has failed to state a proper motivation to modify *Lof*. The examiner states that:

Therefore, it would have been obvious to a person of the ordinary skill in the art at the time the invention was made to combine the power production facility of *Lof* with the bidding for energy supply to customers system of *Johnson* because it would provide an auction service that will stimulate competition and facilitate the consumer's ability to make economic choices between providers (*Johnson*, Page 3, [0017], lines 10-20).

Office Action of March 24, 2005, p.8 (emphasis in original).

As shown above, the proposed combination does not result in the invention of claim 129. The examiner's statement fails to account for the differences between the proposed combination and the invention of claim 129. Thus, the above statement is logically insufficient to serve as a motivation to modify the combination to achieve the invention of claim 129. Accordingly, the examiner has failed to state a *prima facie* obviousness rejection.

In addition, there is no motivation to further modify the references to achieve the invention of claim 129. Neither reference contains any suggestion or hint regarding classifying and modifying power use of individual customer systems. Furthermore, nothing in the prior art known to Applicants shows or suggests this claimed feature. Hence, there is no motivation to further modify the references to achieve the invention of claim 129. Accordingly, claim 129 is non-obvious.

In addition, claim 129 is non-obvious because the references are directed to entirely different problems. *Lof* is directed to solving the problem of maintaining adequate power supply to a power grid when a significant portion of the power provided to the grid is produced by a windmill farm. *Johnson* is direct to a method of auctioning available electrical power to distributors and end users of gas and electric utilities. The problem addressed by *Lof* is wholly different from the problem addressed by *Johnson*. For this reason, one of ordinary skill would not be motivated to combine *Lof* and *Johnson* in the first place, much less to further modify the proposed combination to achieve the invention of claim 129. Moreover, the problems addressed by *Lof* and *Johnson* are unrelated to claim 129, which is directed to associating customer systems with a class of utility service and modifying a service parameter of the utility based on the resulting classifications. Thus, one of ordinary skill would have no reason to look to either *Lof* or *Johnson* for solutions to the problems addressed by claim 129 and one of ordinary skill would have no reason or motivation to combine *Lof* or *Johnson* in the first place. Thus, claim 129 is non-obvious in view of *Lof* and *Johnson* when the references are viewed as a whole.

Regarding independent claims 148, 159, 171, and 183, each of these claims contain limitations similar to those presented in claim 129. For similar reasons, then, the

examiner has failed to state a *prima facie* obviousness rejection of claims 148, 159, 171, and 183. Moreover, these claims are non-obvious for the reasons given with respect to claim 129.

Claims 130-147, 149-158, 160-170, 172-182, and 184-190 all depend from claims 129, 148, 159, 171, and 183 accordingly. Thus, for the reasons given with respect to claims 129, these claims are non-obvious in view of *Lof* and *Johnson* at least by virtue of their dependency on the corresponding independent claims. In addition, these claims contain other features not shown or suggested by either reference

For example, neither *Lof* nor *Johnson* show that the association of a customer system with a class of utility service is *dynamic*, as claimed in claim 130. The examiner asserts that *Johnson* does show the claimed feature, citing the following portion of *Johnson*:

In many states or geographic regions, local electric utilities have formed wholesale power pools in which they share power, as needed, with other members of the pool under arrangements and according to rules previously agreed to by all the members. In some of these power pools, the members' generating facilities and key portions of their respective power grids are placed under the control of a regional or pool controller who manages the continuous balancing of power being transmitted across these grids for greatest efficiency and at lowest cost to the members. The pool controller in some cases, for example, will advise the pool members on one day of the power he expects to need during each hour of the following day, in order to satisfy the projected aggregate demand on the pool's combined grid by the utilities' customers. Each member is invited to submit offers (quantities and prices) of the power it is willing to supply to the combined grid. Starting with the lowest-priced power first, the controller accepts such offers until he reaches the aggregate quantity he needs for each hour of the next day. Typically, the clearing price - the price of the last unit of power needed by the controller to meet his projected demand for each hour - is used to set the price that all suppliers for that hour will receive, notwithstanding that some of the accepted offers were at prices lower than the clearing price. This approach ensures an efficient but equitable least-cost wholesale pricing arrangement among the pool members.

Johnson, p. 2, paragraph 12.

The quoted portion of *Johnson* teaches that a pool controller will advise pool members of the power he expects to need during each hour of the following day in order

to satisfy the projected aggregate demand. Each member submits offers of the power the member will *supply* to the grid. The controller accepts offers from lowest price to highest price until the power demand is satisfied. Thus, this portion of *Johnson* deals with an auction between *power providers* for *providing power* to the grid. On the other hand, claim 130 specifies that “the association of a *customer system* with a class of utility service is dynamic.” *Johnson* teaches nothing regarding the place of the customer during *Johnson*’s bidding process. Moreover, *Johnson* teaches nothing regarding dynamically associating an individual customer system with a class of utility system, as claimed. Thus, the proposed combination does not result in the invention of claim 130 and the examiner has failed to state a *prima facie* obviousness rejection of claim 130.

In another example, neither *Johnson* nor *Lof* show or suggest, “a change in the class of utility service provided to the customer system is based on a cost increase in utility service.” The examiner asserts otherwise, citing to the above-quoted portions of *Johnson*. However, as shown above, *Johnson* does not show or suggest changing the *class of utility service provided to the customer system* based on a cost increase. Instead, *Johnson* shows a bidding process among *power providers* to provide power to a grid. Thus, the proposed combination does not result in the invention of claim 132 and the examiner has failed to state a *prima facie* obviousness rejection of claim 132.

IV.D Asserted Obviousness of Claims 10, 28, 43, 58, and 72

Applicants have amended claims 10, 28, 43, 58, and 72 to include the limitations of the corresponding unamended independent claims. The examiner rejects these claims as obvious in view of *Lof* and *Johnson* for the reasons stated above. Claim 10 is as follows:

10. (Currently Amended) A method for managing a utility service, the method comprising the steps of:
 - analyzing relationship information representing a relationship of availability of the utility service and consumption of the utility service; and,
 - sending a message over a data network to at least one region of a utility service network to thereby modify utility service consumption based on the analysis of the relationship information;
 - wherein each region of the utility service network is classified into a class of service.

Neither *Lof* nor *Johnson* shows or suggests modifying utility service *consumption*, as claimed. As shown above, *Lof* shows regulating power supplied to a grid in which a significant portion of the power is provided using a windmill farm, and *Lof* also shows service contracts for reducing power available to certain customers when a reduction in power available occurs. However, *Lof* does not show or suggest actually modifying the actual *consumption* of the power, as claimed. Instead, *Lof* only teaches modifying the power *available* to the customer. The customer power consumption may have to change in response to the available power, but it need not if sufficient power exists. Furthermore, there is a distinction between directly reducing the actual customer consumption and reducing the power available to the customer. Because neither *Lof* nor *Johnson* show or suggest this claimed feature, the proposed combination does not result in the invention of claim 10. Accordingly, the examiner has failed to state a *prima facie* obviousness rejection of claim 10.

Likewise, neither *Lof* nor *Johnson* show or suggest that each region of the utility service network is classified into a class of service, as claimed. *Lof* and *Johnson* are directed to classifying groups of *power providers*, not classes of service. *Lof* at most shows that end-users are grouped in at least two classes for purpose of imposing tariffs, but not for classifying regions of a utility service network into classes of service, as claimed. *Johnson* is unconcerned with the end user, except in how the end users affect the bidding process among the power providers. Thus, the proposed combination does not result in the claimed inventions. Accordingly, the examiner has failed to state a *prima facie* obviousness rejection of claim 10.

In addition, the examiner has not stated how one of ordinary skill would be motivated to further modify the proposed combination to result in the invention of claim 10. Thus, the examiner has again failed to state a *prima facie* obviousness rejection of claim 10.

In addition, claim 10 is non-obvious because the references are directed to entirely different problems. *Lof* is directed to solving the problem of maintaining adequate power supply to a power grid when a significant portion of the power provided to the grid is produced by a windmill farm. *Johnson* is direct to a method of auctioning available electrical power to distributors and end users of gas and electric utilities. The

problem addressed by *Lof* is wholly different from the problem addressed by *Johnson*. For this reason, one of ordinary skill would not be motivated to combine *Lof* and *Johnson* in the first place, much less to further modify the proposed combination to achieve the invention of claim 10. Moreover, the problems addressed by *Lof* and *Johnson* are unrelated to claim 10. Thus, one of ordinary skill would have no reason to look to either *Lof* or *Johnson* for solutions to the problems addressed by claim 10 and one of ordinary skill would have no reason or motivation to combine *Lof* or *Johnson* in the first place. Thus, claim 10 is non-obvious in view of *Lof* and *Johnson* when the references are viewed as a whole.

Regarding claims 28, 43, 58, and 72, these claims contain limitations similar to claim 10. Thus, for similar reasons, the examiner has failed to state *prima facie* obviousness rejections of these claims. Similarly, these claims are non-obvious in view of *Lof* and *Johnson* for the reasons given above.

IV.E. Rejection of Claims 11, 12, 29, 30, 44, 45, 59, 60, 73, and 74

Regarding claims 11, 12, 29, 30, 44, 45, 59, 60, 73, and 74, the same distinctions between *Lof* and *Johnson* and claim 10 can be made for these dependent claims. Thus, the proposed combination does not result in the inventions of these claims and these claims are non-obvious in view of *Lof* and *Johnson*.

IV.F Summary of Non-Obviousness of Claims 10-12, 28-30, 43-45, 68-60, 72-74, 86-88, and 129-190

The examiner has failed to state *prima facie* obviousness rejections of these claims because the proposed combination does not result in the claimed inventions and because the examiner has not stated a proper motivation to combine the references to achieve the claimed inventions. In addition, these claims are non-obvious in view of *Lof* and *Johnson* because *Lof* and *Johnson* are directed two distinct problems and because neither *Lof* nor *Johnson* is related to the problem solved by the claimed inventions. Therefore, the rejection of claims these claims under 35 U.S.C. § 103 has been overcome.

V. Conclusion

It is respectfully urged that the subject application is patentable over *Lof* and is now in condition for allowance.

The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: June 23, 2005

Respectfully submitted,



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